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Wednesday, January 14, 2015

1:33 p.m.

P R O C E E D I N G S

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THE CLERK: Calling civil 143264; In Re Capacitors
Antitrust Litigation.

Counsel, please come forward and state your appearances for
the record.

MR. WILLIAMS: Good afternoon, your Honor. My name
is Steve Williams for the Indirect Plaintiffs.

THE COURT: Mr. Williams.

MR. SAVERI: Good afternoon, your Honor. Joseph
Saveri on behalf of the Direct Plaintiffs.

THE COURT: Mr. Saveri.

MR. NICOUD: Good afternoon, your Honor. George
Nicoud on behalf of NEC Tokin and NEC Tokin America.

And on -- at least on a number of issues today, I've been
asked by some other defendants to speak on their behalf as
well.

THE COURT: Okay.

MS. POLIDORA: Good afternoon, your Honor. Roxane
Polidora of the Pillsbury Firm on behalf of the KEMET
defendants.

THE CLERK: You're not being picked up at all. Move
the microphone closer to you.

MS. POLIDORA: How's that? Roxane Polidora of the

1 Pillsbury Firm on behalf of the KEMET defendants. And I will
2 also be speaking today on behalf of five other defendants.

3 THE COURT: All right.

4 MR. RULE: Good afternoon, your Honor. Richard Rule,
5 Cadwalader, Wickersham, and Taft, on behalf of United Chemi-con
6 and Nippon Chemi-con.

7 MR. AZARMI: Good afternoon, your Honor. Andrew
8 Azarmi of McKenna Long appearing on behalf of the Shinyei
9 defendants; that's Shinyei Technology Company, Shinyei
10 Capacitor Company, Shinyei she Kaisha, and Shinyei Corporation
11 of America.

12 And also with me today is Steve Chippendale and Gaspare
13 Bono, who applied for pro hac applications. Orders are
14 pending. Thank you.

15 THE COURT: That it? Okay.

16 Let me start with who's here for Nippon Chemi-con and TDK?
17 Okay. Mr. Saveri, is this your issue? All right. Okay.

18 MR. SAVERI: (Inaudible.)

19 THE COURT: The 12(b)(2) issue?

20 MR. SAVERI: Yeah.

21 THE COURT: Yeah. All right. This is fine with me.
22 So I'll order that schedule that you all have agreed to. I am
23 going to allow discovery. That's perfectly appropriate at this
24 stage. It's limited to 12(b)(2) issues; okay?

25 I'm going to trust you to keep it focused, Mr. Saveri; and

1 if it's not, I'm sure I will hear about the defendants.

2 So this will all be in the minute order, but let me give
3 you the dates. You ought to serve that discovery by the 16th;
4 1-16-15. You've already served it, didn't you? It's already
5 been served? Didn't you serve something on 12(b)(2) for these
6 defendants?

7 MR. WILLIAMS: Your Honor, Steve Williams. We're
8 part of this for Nippon Chemi-con. We sent it to them not as
9 service because we first wanted to ensure that we had --

10 THE COURT: Okay.

11 MR. WILLIAMS: -- permissions.

12 THE COURT: All right. They have full sets for both
13 Directs and Indirects?

14 MR. WILLIAMS: As to Nippon Chemi-con.

15 THE COURT: Okay. That will be deemed served today
16 then.

17 So your response ought to be 30 days from today; finish
18 your discovery by 3-17-15. Let's see. Plaintiffs, you ought
19 to file your oppositions by 4-16-15. Replies will be 5-1-15
20 and I'll hear this on 5-20-15.

21 Now, as we go through the rest of the afternoon, which
22 won't be that much longer, I'm going the order other discovery.
23 These defendants are only for 12(b)(2) discovery; okay?
24 They'll be exempt from the other discovery until I have
25 processed that motion; all right?

1 UNIDENTIFIED SPEAKER: Yes.

2 THE COURT: Anything else on that?

3 (Whereupon the speaker was inaudible.)

4 THE COURT: Good. All right. Thank you.

5 All right, who's from DOJ? Is there any DOJ person here?

6 Yes, come up.

7 MS. LEM: Jacki Lem for the United States. Good

8 afternoon, your Honor.

9 THE COURT: How are you?

10 MS. LEM: Good. Thank you. And you?

11 THE COURT: All right. So you're going to tell me in
12 a couple weeks we're all set to go in discovery?

13 MS. LEM: Yes, your Honor. The status of that is I
14 think our position is still that we are requesting the stay
15 that is currently in place until April 15th.

16 THE COURT: April 15th?

17 MS. LEM: Yes. April 15th. To the extent that there
18 are any changes in our position between now and then, we will
19 let your Honor know. But as of now, there are no changes in
20 our request for that continued stay.

21 THE COURT: Okay.

22 MS. LEM: We have discussed with the plaintiffs --

23 THE COURT: So what happens on the 15th? You're
24 going to tell me -- okay.

25 MS. LEM: Excuse me?

1 THE COURT: What happens on the 15th of April?

2 MS. LEM:: I think we will update the Court in an
3 under-seal filing on the status of our investigation.

4 THE COURT: All right.

5 MS. LEM: And we will either request an extension of
6 that stay or maybe perhaps a different kind of stay or we might
7 not request anything at all. But it remains to be seen what
8 exactly we will --

9 THE COURT: All right.

10 MS. LEM: -- ask for depending on how our
11 investigation proceeds.

12 THE COURT: So the plaintiffs tell me that you all
13 have agreed that if it's approved, that less than eight --

14 MS. LEM: That's correct, your Honor.

15 THE COURT: -- areas of discovery; is that right?

16 MS. LEM: That's correct, your Honor.

17 THE COURT: Okay. So that would be discovery RFP's
18 (phonetic) and interrogatories on the topics of organizational
19 structure; identification of products; pricing; sales
20 transactional data; FTAIA issues; personal jurisdiction; and
21 discovery from third parties; right? Okay. And Government is
22 okay with that?

23 MS. LEM: Yes, we have discussed that.

24 THE COURT: All right. We're going to make it
25 happen; okay? So you all get that going.

1 Also, I want everyone to start working out the initial
2 disclosure and the ESI issues. I don't want any delays on
3 that; all right?

4 UNIDENTIFIED SPEAKER: (Inaudible.)

5 THE COURT: You have a proposed order or are you
6 going to use my -- our Court's mono-order? You need to come up
7 so we can --

8 MR. SAVERI: Oh. So --

9 THE COURT: When somebody mandamus' me, they need to
10 be able to hear you.

11 MR. SAVERI: So --

12 THE COURT: Are we going to --

13 THE CLERK: State your name.

14 MR. SAVERI: Joseph Saveri.

15 The Petkoski initial disclosures, we actually -- for the
16 direct purchaser plans, we actually did our initial disclosures
17 before. It was early in the case.

18 THE COURT: All right.

19 MR. SAVERI: That's easy.

20 THE COURT: Have you gotten them from defendants?

21 MR. SAVERI: No.

22 THE COURT: All right. What about ESI? Are you
23 going to use the Court's mono-order or are you going to do
24 something else?

25 MR. SAVERI: We're strong proponents of that. We

1 advocated that in our run up to the initial CMC. We'd like to
2 really get into that process and continue it.

3 THE COURT: All right.

4 MR. SAVERI: We've asked and we'd like to engage in
5 that and get it going as -- and complete it as soon as
6 possible, your Honor.

7 THE COURT: All right. And you all want to use the
8 same; right? I want -- on the plaintiff's side, I want
9 identical ESI; everything else that we do.

10 MR. WILLIAMS: Steve Williams. Yes, that's correct.

11 THE COURT: Okay. Great. Okay. Let's get that
12 underway.

13 Now, FTAIA scheduling. I am going to keep that separate so
14 we will skip to my original guideline of having those addressed
15 in the third quarter of this year. I will set these dates --
16 all these things are doing to be in the minute order so you
17 don't have to worry about writing them down so just so you
18 know.

19 Summary judgment motions on FTAIA elements or defenses will
20 be filed -- are due July 8th, 2015; 7-8-2015. Oppositions will
21 be due 8-5-15. Replies due 8-12-15. And I will hear those
22 issues on 8-26-15 at 10:00 a.m.

23 Yeah. Okay. All right. Anything else I can help you
24 with?

25 UNIDENTIFIED SPEAKER: (Inaudible.)

1 UNIDENTIFIED SPEAKER: (Inaudible.)

2 MS. POLIDORA: Your Honor, Roxane Polidora on behalf
3 of KEMET.

4 In the CMC statement, KEMET and five other defendants took
5 the position that the stay should remain in place as to this
6 group of defendants because these defendants are only named in
7 the Direct case. They're not named in the Indirect case. And
8 we believe that we have strong *Twombly* motions.

9 THE COURT: Everybody believes they have strong
10 *Twombly* motions. I mean, is there anybody out here who does
11 not believe they have a strong *Twombly* motion? Raise your
12 hand. No, no, no. You don't have a *Twombly* motion. You have
13 the *Twombly* opposition.

14 MS. POLIDORA: Right. They stated they would a file
15 a *Twombly* motion.

16 THE COURT: I'm not going to do that. You're all on
17 the same bus. Okay. Everyone is going to move. It's a tour
18 bus; you're all on the bus; you're all going to move at the
19 same time so I'm not carving out those defendants.

20 MS. POLIDORA: Okay.

21 MR. SAVERI: (Inaudible.)

22 THE COURT: You got to come up, Mr. Saveri. Stand by
23 the mic.

24 MR. SAVERI: Uh, here's the question. We are -- we
25 have our opposition motions due at the end of the week to the

1 12(b)(2) .

2 THE COURT: Uh-huh.

3 MR. SAVERI: The defendants have filed separate
4 briefs --

5 THE COURT: Yes.

6 MR. SAVERI: -- and we're preparing.

7 THE COURT: You're talking about the supplemental
8 ones?

9 MR. SAVERI: Yeah. So there's kind of two pieces.
10 There's a joint brief and then there's a kind of compendium of
11 individual defendant briefs.

12 We would like to present our opposition in a way that is
13 most easy for you. Our current thinking is to file a -- on
14 behalf of the Direct persons or plaintiffs a single brief that
15 addresses both the joint arguments as well as the individual
16 ones.

17 We think that's a better way to do it because it will
18 eliminate a lot of the duplication and the overlap between the
19 separate briefs.

20 In order to do that, we think we can probably do it --

21 THE COURT: Well, let me just interrupt. But the
22 separate -- I gave people, you know, a little extra five page
23 if they had unique issues related to the pleadings.

24 So how do you -- how are you going to do that in a combined
25 format? I thought each -- if they did it the right way and I

1 don't know if they did; but if they did it the right way, each
2 person should have raised -- each defendant should have raised
3 a sui generis issue that you can't sort of lump together.

4 MR. SAVERI: And you -- I think you'll see when you
5 see the papers that with respect to the -- the sui generis part
6 of this, there's a -- there's a fair amount of overlap and
7 repetition amongst the people who say this is my own particular
8 issue.

9 THE COURT: Uh-huh.

10 MR. SAVERI: And so if we -- if we have an argument
11 that -- that essentially says, you know, we -- we prevail on
12 these sui generis arguments for the same basic reason.

13 THE COURT: That's fine.

14 MR. SAVERI: And so --

15 THE COURT: Yes.

16 MR. SAVERI: -- I'd like to say it once to you, your
17 Honor.

18 THE COURT: Yes.

19 MR. SAVERI: And do -- to me, that makes sense, but I
20 didn't want to presume that.

21 THE COURT: That's okay. That's -- let's do it that
22 way.

23 MR. SAVERI: And so would that --

24 THE COURT: And then if you have separate things, I
25 would like it to be separate though; okay?

1 So if you have something that covers -- this is for the
2 IPP's, too. If you have something that covers -- because they
3 didn't -- they didn't follow the guidelines as close as they
4 should have and they raised generic issues, you can address it
5 generically; meaning, across the board, but make -- if there's
6 something unique; if some defendants said, you know, I've never
7 done anything and here's whatever I need to do to say that, you
8 should address that as just that -- as a side thing; because
9 when I go through it, I just want to have them side by side.

10 MR. SAVERI: Oh --

11 THE COURT: Okay.

12 MR. SAVERI: And we'll try to do that.

13 But what that probably means is the kind of joint and
14 overlapping brief will be something on the order of 40 or 50
15 pages because -- just to get the coverage.

16 THE COURT: How much did I give the defendants?

17 MR. SAVERI: I think 23. You put it altogether.
18 It's something, like, 75 or 80 pages. Their briefs turned out
19 to be -- if you count them all.

20 THE COURT: No, not as group. But how much --

21 UNIDENTIFIED SPEAKER: (Inaudible.) -- joint brief --
22 our case 35.

23 THE COURT: 35. Okay.

24 UNIDENTIFIED SPEAKER: (Inaudible.) -- one
25 consolidated brief with two or three page sections per

1 defendant because only for us -- inaudible -- is longer for us.

2 THE COURT: Right.

3 UNIDENTIFIED SPEAKER: About 25 pages.

4 THE COURT: So what do you want, Mr. Saveri. You
5 want 40 total?

6 MR. SAVERI: I want 50 total. Put it altogether and
7 to me, it -- looking at it --

8 THE COURT: 50 for everything?

9 MR. SAVERI: Yes.

10 THE COURT: Okay. I'm going to encourage you to come
11 in below that. Up to 50 in an emergency; okay?

12 MR. SAVERI: I hear you, your Honor.

13 THE COURT: All right.

14 MR. SAVERI: Set goal.

15 THE COURT: That's for everything. No side briefs;
16 nothing. That's it. One -- okay.

17 MR. SAVERI: All in.

18 THE COURT: All in. Yeah. Mr. Litwin (phonetic),
19 you're good?

20 UNIDENTIFIED SPEAKER: Good. Thank you.

21 THE COURT: You're good. All right. Good. Okay.
22 All right. Anything else?

23 MR. NICLOUD: Your Honor, George Nicoud for the NEC
24 Tokin defendants and I was going to be speaking for a group of
25 defendants that were willing to get going on discovery, which

1 you've already addressed.

2 I just want to ensure that to the extent any defendant has
3 a particular issue with burden because of the way their client
4 has organized or anything like that, we still have the
5 opportunity to object and --

6 THE COURT: Of course.

7 (Inaudible due to simultaneous colloquy.)

8 MR. NICOUD: -- and plaintiffs -- we disagree.

9 THE COURT: I'm not -- I just want to get it going.
10 I'm not overruling preemptively objections. No, you have the
11 full panoply of Rule 26 to revel in; okay? You can do whatever
12 you want.

13 But you will see me if there's a dispute so keep that in
14 mind. I keep all my own discovery.

15 MR. NICOUD: We understand, your Honor.

16 THE COURT: Okay.

17 MR. NICOUD: Thank you.

18 THE COURT: And you need to follow that -- sounds
19 like you're in anticipating objections. You need to follow my
20 discovery standing order on how to raise those if you are
21 unable to work it out; okay?

22 MR, NICOUD: Understood.

23 THE COURT: All right. Yeah?

24 MS. POLIDORA: -- Polidora again, your Honor.

25 THE COURT: Yes?

1 MS. POLIDORA: I just wanted to raise to your
2 attention that before the hearing, I did discuss with
3 plaintiffs' counsel this prospect of the defendants that are
4 only in the Direct case; many of them are American companies
5 with no connections to Japan; that's something In Re Capacitors
6 (phonetic).

7 And plaintiff's counsel seem to be willing if -- as the
8 Court has ordered today, the discovery begin that they can
9 phase these five defendants -- or six defendants who are not in
10 the Indirect case because they're going to have a lot to do
11 with the defendants that are in both cases.

12 So given that the plaintiffs seems to be willing to proceed
13 with this approach, I'd request that our clients not be forced
14 to incur the expense and costs associated with these discovery
15 activities when we believe we're going to be out of the case in
16 two months.

17 MR. SAVERI: Your Honor?

18 THE CLERK: Your name?

19 MR. SAVERI: Joseph Saveri. When -- it's important
20 for us to get this train moving. And the proposal was made to
21 have discovery begin with some subset of the defendants
22 generally. We have no content to that. We have no firm
23 agreement.

24 I indicated that I'm willing to entertain that and
25 Ms. Polidora describes that conversation.

1 Frankly, as we said in our original papers, we want this
2 whole thing to get going and we want to -- we want to start it
3 once.

4 As an accommodation, if there was one group that was
5 willing to actually do something quickly so we can get started,
6 I was amenable to that.

7 Frankly, our preference has been all the way along to get
8 everybody going at once because we think that's the most
9 efficient way to move the schedule.

10 Having said that, I'm always willing to try to accommodate
11 the defendants.

12 THE COURT: Well, you all work it out; okay? You can
13 do whatever you want. I'm not extending any dates. And don't
14 come -- you can't come back here and say oh, he gave somebody a
15 break and now I'm three months behind on discovery. That's not
16 going to happen. It's all on you.

17 So if you feel the plaintiffs can work it out and the
18 defendants can work it out; that's fine. You can privately
19 order whatever you want as long as it does not affect the
20 deadlines.

21 MR. SAVERI: Okay.

22 THE COURT: I'm not going to hear in a year, you
23 know, we gave somebody extra time and now we're behind. That's
24 going to be your problem, not mine.

25 MR. SAVERI: I hear you loud and clear, your Honor.

1 THE COURT: All right.

2 MS. POLIDORA: Thank you, your Honor.

3 THE COURT: Okay. Yes?

4 MR. MARTINEZ: Yes. Michael Martinez, counsel for
5 Nichicon Corporation and Nichicon America Corporation.

6 I just wanted to make sure that you understood, your Honor,
7 that there's one defendant -- or at least one -- that is in a
8 unique circumstances of the defendants we discussed today; and
9 is, FPCAP Electronic Suzhou a company based in the People's --

10 THE COURT: Who?

11 MR. MARTINEZ: FPCAP Electronics Shouvou,
12 S-h-o-u-v-o-u, (phonetic).

13 THE COURT: All right.

14 MR. MARTINEZ: It's based on the People's Republic of
15 China. It was named as a defendant solely by the Direct
16 Purchaser Plaintiffs in their consolidated complaint, but it
17 has not yet been served.

18 And so I raise the issue just to preserve and to clarify
19 that we will have the opportunity to file motions to contest
20 personal jurisdiction and under Rule 12(b)(2); and, if it is
21 indeed ever served.

22 THE COURT: What's the service problem? Who -- is it
23 Mr. Saveri?

24 MR. SAVERI: Yes, your Honor. There are certain
25 defendants that we've identified in the case management

1 conference statement who are -- who are standing --

2 THE COURT: That's a -- that's footnote two; right?
3 The five defendants?

4 MR. SAVERI: And those defendants are apparently
5 standing under their rights under the Hague Convention to
6 service pursuant to the Hague.

7 THE COURT: Can't I order service and counsel under
8 4(g)?

9 MR. SAVERI: You can, your Honor. We -- we've asked
10 the counsel for of those defendants to waive service.

11 THE COURT: I'm not bound by the Hague -- I can order
12 service under 49g). So don't make this a problem. You're
13 going to get served so --

14 MR. SAVERI: I'm sorry, your Honor?

15 THE COURT: You're going to get served so let's not
16 get hung up on this; all right?

17 MR. SAVERI: Just to clarify; we have never received
18 a request to waive service and we would have communicated with
19 the plaintiffs if that was indeed the case. We have not.

20 THE COURT: All right. You two work it out, but you
21 let me know. I guess, Mr. Saveri, because it's your
22 obligation; you let me know and I will see what I need to do
23 after that. I'm not going to get hung up on service issues;
24 okay?

25 MR. SAVERI: Understood, your Honor. We just want to

1 make clear we had not been served; and thus, had not had an
2 opportunity to file motions --

3 THE COURT: I get it.

4 MR. SAVERI: -- to contest --

5 THE COURT: But once that happens, I'll -- you know,
6 you're going to get slotted in so just count on that; okay?
7 But I don't want -- I don't want to play around with service
8 issues because if I have to -- Rule 4(g) has been amply
9 established in this District and this Circuit as allowing me to
10 compel service through counsel.

11 MR. SAVERI: Well, we affirmatively raise it today so
12 we could get this clarity, your Honor.

13 THE COURT: Okay. Why don't you keep -- on the way
14 out, why don't you just work it out; okay?

15 MR. SAVERI: Yes.

16 THE COURT: How about the other -- how about the
17 other four? What's going on with those?

18 UNIDENTIFIED SPEAKER: Your Honor, well -- we -- we
19 are proceeding with Hague service; again, with respect to those
20 other defendants. We -- I don't -- I believe we specifically
21 asked everybody. And when we didn't get an affirmative answer,
22 we went -- we initiated the Hague process. And so that's under
23 way. It takes a little time. They're essentially going to get
24 served and that will be accomplished.

25 THE COURT: Do they have counsel that you know of?

1 UNIDENTIFIED SPEAKER: I believe so. The only one
2 that I don't believe has America counsel is, I believe, Taiyo
3 Yuden, which was the entity that filed the motion to dismiss,
4 which the Court struck because it wasn't represented by
5 counsel.

6 THE COURT: Okay. All right. Just -- I would try to
7 get this resolved in the next week. I don't want -- I can't
8 piecemeal the motion schedule so let's -- put a lethargy
9 (phonetic) on it; okay?

10 UNIDENTIFIED SPEAKER: Okay.

11 THE COURT: Good.

12 UNIDENTIFIED SPEAKER: Okay. One last thing, your
13 Honor, just to clarify. We will obviously will work with
14 Mr. Saveri to work on the waiver of service; but to make sure
15 my understanding is correct, the FPCAP will not be subject to
16 any discovery requirements until it's served in --

17 THE COURT: Not in the case. We can't do anything
18 right now --

19 UNIDENTIFIED SPEAKER: Correct.

20 THE COURT: -- until you're served.

21 UNIDENTIFIED SPEAKER: Thank you.

22 THE COURT: However, once you get served, you're not
23 going to get, you know, extension after extension. You can --
24 we're going to have to get you in quickly because I want to
25 keep this as a unified group.

1 UNIDENTIFIED SPEAKER: We understand.

2 THE COURT: Okay. Good. All right.

3 UNIDENTIFIED SPEAKER: Thank you, your Honor

4 (Inaudible.)

5 THE COURT: I'm not going to say anything else this

6 time. I'm going to wait until somebody starts up. Is there

7 anything else? Is that it?

8 MR. SAVERI: Not for us.

9 THE COURT: Okay. Great. Thanks for coming in.

10 (Proceedings concluded at 11:54 p.m.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.



DATE 1-29-15

Carrie McKee-Parks
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Date